From: Dave Cook
To: Microsoft ATR
Date: 1/27/02 6:53am
Subject: Microsoft Settlement

To: US Dept. of Justice
Attn: Antitrust Division
Re: Proposed Final Judgement in Microsoft case

Let me first take a moment to introduce myself. I have been a professional software developer for over 20 years and am currently Vice President of Software Development at a local startup company in San Diego. I have never been employed, either directly or indirectly, by Microsoft, by any company closely affiliated with Microsoft, any of its competitors involved in this case, by the U.S. or state governments, nor by any group tending to take a strident view of the case (e.g. Linux vendors). In the course of my career I have developed software for both Microsoft OSes and other non-Microsoft platforms ranging from DEC VAX and PDP-11 to very small embedded systems. Furthermore, I have no personal relationship with any party involved in the case.

I have followed the course of this case (and indeed the previous case involving Windows 95) with somewhat detached interest, until recently when the proposed final judgement was published.

Even though a principal finding of the trial court -- that Microsoft has used illegal means to sustain its monopoly in operating systems -- has been upheld on appeal, I can find nothing in the proposed Final Judgement that imposes an actual penalty for this violation of law. In addition, I do not believe that the proposed conduct remedies are useful, given that the Consent Decree in the previous case appears to have had no effect in deterring the offenses that are now the subject of the present case.

The proposed Final Judgement contains only a section entitled "Prohibited Conduct", and the remainder of the document is concerned with enforcement procedures, termination, and the like. There is nothing resembling a penalty. In effect, the settlement amounts to the command, "don't do it again", despite the fact that consumers have suffered massive tangible economic harm, and that the market has suffered more intangibly from the presence of an illegal monopolist.

Attempting to make some kind of estimate of harm to consumers, suppose that the monopoly has been illegally maintained for 5 years. In that time, roughly 100 million licenses of various releases of Windows have been sold. Let us further estimate that the average effective price to consumers through OEM PC sales has been (conservatively) around $50, and that the absence of competitors has caused that price to be $10 higher than it would have been had there been no violation of the Sherman Act. On this estimate, the approximate direct economic harm to consumers is in the vicinity of $1 billion. Of course there is a considerable error bar on this estimate as the impact of the illegal behavior is somewhat difficult to quantify, but the essential point is that the harm is certainly enormous and that Microsoft has profited directly from illegal practices.

Given the nature of the case and the existence of ill-gotten profits, an appropriate penalty would be a substantial economic one. I believe that a large cash fine is in order, and if calculated properly would cause sufficient discomfort at Microsoft to provide a real disincentive to continuing the behaviors it has been found to have committed.

That the proposed Final Judgement contains no actual penalty whatsoever in light of this level of harm is,

in my opinion, patently contrary to the public interest, and I therefore urge the court to reject it as not being in the public interest, as the court is empowered to do. The government has proven its case, and the public is entitled to something better than a glorified restraining order.

Regards,
David B. Cook
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